

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT/CONTACT: Jerry Brennan
3405 Lake Washington Blvd. N
Renton, WA 98056

LUA-09-136, ECF, SM, SMC

LOCATION: 3411 Lake Washington Boulevard North

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the construction of a new 80-foot dock and installation of a pre-manufactured, freestanding, portable marine grade aluminum boatlift in association with a single-family residence on the shore of Lake Washington.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on December 1, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the December 8, 2009 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, December 8, 2009, at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<u>Exhibit No. 2:</u> Vicinity Map
<u>Exhibit No. 3:</u> Proposed Site Plan	<u>Exhibit No. 4:</u> Proposed Top View and Proposed Elevation View
<u>Exhibit No. 5:</u> Planting Plan	<u>Exhibit No. 6:</u> Zoning Map
<u>Exhibit No. 7:</u> Shoreline Substantial Development Permit	

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The property is located at 3411 Lake Washington Boulevard North. The request is for a dock and boatlift. The dock would be 82-feet long, 80-feet over water. The ramp would be 27-feet long and 4-feet wide. The dock would be supported by 8 eight inch pile driven steel piles and would be installed by a barge mounted crane. All equipment and personnel would be transported to the site by the barge. The applicant will have a floating silt curtain installed to curtail sediment dispersal in the lake during all construction activities. All construction would take place July 16 through December 31. The construction of the dock and boatlift would take approximately 5-7 days, the pile driving activities would be approximately 3-4 of those days.

The boatlift would be assembled and put in place by the barge mounted crane, the boatlift would be a 10' x 10' pre-manufactured, free-standing marine grade aluminum boatlift. It would rest on 4-foot pads that are 12"x12" sitting directly on the lake bottom.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with 2 mitigation measures. No appeals were filed.

This project appears to meet the five criteria for a Shoreline Conditional Use Permit including being compatible with other permitted uses within the area, not interfering with the public use of the public shoreline, being compatible with the surrounding area and the City's Master Program, being in harmony with the general purpose and intent of the City's Master Program and meeting the conditional use criteria in WAC 173-27-160.

The pre-manufactured boat lift would be solar powered, the hydraulics would be bio-degradable fluids and no lighting has been proposed for the dock at this time.

This project does require a Shoreline Substantial Development Permit.

Jerry Brennan, 3405 Lake Washington Blvd N, Renton 98056 stated that he had an aerial photo showing the proximity of his dock and boatlift to the Kennydale Park located just north of his property. The 80-foot dock is to get to a water depth of approximately 7.5-feet, which is most beneficial to the fisheries. There would be no plantings in the lake, after trying that he found that the movement of the water did not allow the plantings to survive.

Kayren Kittrick, Community and Economic Development recommended a "call before you dig and locate" because there is a 10" sewer main right along the westerly edge of the boatlift. The main tends to be quite shallow in that area.

Jerry Brennan stated that he has identified the sewer line and he has done an underwater topographical of the sewer line, which appears to be an 8" line. He does not trust all drawings, so he would be having a diver locate the line and tie buoys on it before any in-water work is done.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:28 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Jerry Brennan, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install a boatlift as well as an associated dock in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 3411 Lake Washington Boulevard North. The subject site consists of an approximately 8,515 square foot lot. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington. The subject site is immediately south of Kennydale Beach Park.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of single family residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned R-8 (Residential - 8 lots per acre). The site is developed with a single family home.
9. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
10. The applicant proposes installing an 80-foot long dock (over water length) and a 10-foot by 10-foot boatlift in the lake. The dock is a permitted use for residential uses under the Shoreline Master Program. The Shoreline Master Program does not identify boatlifts in its text as a permitted use and, therefore, it must be reviewed under the Shoreline Conditional Use provisions.
11. As indicated, the pier or dock will be 80 feet long. The dock will vary from 4 to 8 feet in width. It would be supported by eight 8-inch diameter piles. The piles would be driven from a barge by drop hammer. It would take approximately 5 to 7 days for installation with the driving taking about 4 days. The boatlift would be freestanding and supported by 4 legs with pads set directly on the lake bed. The pier and lift would be marine grade aluminum and a grated material to allow the passage of light to ward off predators of salmon.
12. Code requires a five foot side yard setback from the property line. The proposal meets this requirement.
13. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake. A silt fence will be installed around the work area.
14. The applicant will plant native vegetation in association with dock construction.

15. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
16. Other boatlifts have been approved along other areas of the Lake Washington shoreline in Renton.
17. A sewer line is located in the lake bed adjacent to the subject site. Any work done in the lake will have to be planned around the location of the line including the driving of the piles as well as the location of the footpads for the boat lift.
18. As noted above, the subject site is located adjacent to a public park and swimming area. Staff noted that the swimming area is cordoned off and boats are kept out of that area.

CONCLUSIONS:

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
 - i. The use must be compatible with other permitted uses within that area.
 - ii. The use will not interfere with the public use of public shorelines.
 - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
 - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
 - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable

effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area is zoned for residential uses. Many residential properties along Renton's Lake Washington shoreline are served by docks and piers. Boatlifts are becoming more common. The lift is proposed for the private areas of lake bottom and the adjacent uplands although they are located in the lake. It should be non-intrusive visually and has become a more common element of already permitted docks and piers. The lift should not present an unusual obstacle to navigation. As noted, the swimming areas of the adjacent park are already separated from boat traffic. The one additional dock and lift will be setback from both the actual property line and swimming area.
3. The proposed lift should not interfere with public use of the shoreline, particularly since this is a private shoreline. The dock and lift will extend out into the lake further than some nearby docks because of the shape of the shoreline but the dock for the park extends out into the lake north of this site. Again, the dock is already permitted in this area.

4. The lift will be setback approximately 45 feet from its north property line and 33 feet from its south property line, more than required by code. It will not create any untoward impacts on adjacent uses or on water-oriented uses.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. The applicant proposes additional plantings in conjunction with installing the dock. The lift will be out in the lake and not affect the actual shoreline, although the dock and pilings will obviously permit and encourage boating on the lake.
6. The lot is private and extends out into the lake. The proposed lift will serve its respective lot. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.
7. The dock and lift should not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for residential uses and the usual complement of accessory uses. On a lakeshore property, piers, docks and similar uses including the proposed lift would be considered reasonable accessory uses.
8. The proposed lift should not create any significant adverse affects on the shoreline environment. The pier and lifts should not further harm the public interest.
9. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. This is an urban shoreline of Lake Washington and piers have been an accepted accessory use of waterfront property and others already exist in Renton and surrounding shoreline areas. The lifts and pilings would be located shoreward of the pier's end. Any number of docks already protrude out into the lake from many of the homes along the shore. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much of a significant effect on the lake or shore.
10. Since the lift is neither permitted nor prohibited outright, it requires review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
11. The applicant will have to observe due caution when working near or over the existing sewer line located in the lake bed.

RECOMMENDATION:

The Conditional Use Permit and the Shoreline Substantial Development Permit for the pier and boatlift should be approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Significance – Mitigated issued on November 9, 2009.
2. The applicant shall comply with all construction conditions by the State agencies and all construction conditions provided in the application submitted to the City.
3. The applicant shall have to observe due caution when working near or over the existing sewer line located in the lake bed.

ORDERED THIS 22nd day of December 2009.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 22nd day of December 2009 to the parties of record:

Gerald Wasser
1055 S Grady Way
Renton, WA 98055

Jerry Brennan
3405 Lake Washington Blvd. N
Renton, WA 98056

Kayren Kittrick
1055 S Grady Way
Renton, WA 98055

TRANSMITTED THIS 22nd day of December 2009 to the following:

Mayor Denis Law
Jay Covington, Chief Administrative Officer
Julia Medzegan, Council Liaison
Marty Wine, Assistant CAO
Gregg Zimmerman, PBPW Administrator
Alex Pietsch, Economic Development
Jennifer Henning, Development Services
Stacy Tucker, Development Services

Dave Pargas, Fire
Larry Meckling, Building Official
Planning Commission
Transportation Division
Utilities Division
Neil Watts, Development Services
Janet Conklin, Development Services
Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., January 5, 2010** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., January 5, 2010.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in

private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.